

THE FLORIDA SENATE
2021 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS HB 421 and HB 1101 — Relief from Burdens on Real Property Rights by Judiciary Committee; Local Administration and Veterans Affairs Subcommittee; and Reps. Tuck, Persons-Mulicka, and others (CS/CS/SB 1876 by Rules Committee; Judiciary Committee; and Senator Albritton)

The bill amends the Bert J. Harris, Jr., Private Property Rights Protection Act and the Florida Land Use and Environmental Dispute Resolution Act. Both acts provide procedures and remedies to land owners whose property is inordinately burdened by a local government regulation. In the Bert Harris Act, the definitions of an “action of a governmental entity” is revised to include government actions that affect “real property including acting on an application or permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy.” The term “real property” is amended to mean, in part, land and any surface, subsurface, or mineral estates and any appurtenances and improvements to the land, including other relevant interests.

The bill also revises the definition of “land” or “real property” in The Florida Land Use and Environmental Dispute Resolution Act to match, by cross-reference, the newly amended definition of real property in the Bert Harris Act.

Additionally, the bill revises the Bert Harris Act to:

- Reduce the timeframe under which a claimant must notify the government before filing an action for compensation;
- Specify that written settlement offers are presumed to protect the public interest;
- Allow the claimant to have the court, rather than a jury, determine damages;
- Extend the point in time from which a prevailing claimant may recover attorney fees and costs; and
- Authorize a property owner to pursue a claim for compensation in certain circumstances without first formally pursuing an application for a development order, development permit, or building permit when doing so is deemed to constitute a waste of resources.

The Bert Harris Act is also amended to provide that a real property owner who files a claim under the Act remains entitled to relief for that claim even if he or she subsequently relinquishes legal title to the real property in question before the conclusion of proceedings to resolve the claim. (This appears to reverse the holding in a recent Second District Court of Appeals case in which the plaintiff, who sold the property while litigating a claim, was determined to no longer be a “property owner” entitled to relief under the Act. The appellate court certified the issue raised in the case to the Florida Supreme Court as an issue of great public importance.)

The bill also allows a property owner to sue for injunctive relief, and a court to declare, that a prohibited exaction is invalid. Current law defines a “prohibited exaction” as a condition imposed by a governmental entity on a property owner’s proposed use of real property that does not have an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate. The bill revises the statutes relating to prohibited exactions to expressly allow a

property owner to sue for injunctive relief, and a court to declare, that a prohibited exaction is invalid. Additionally, the bill provides that the property owner does not have to exhaust all administrative remedies before filing suit to declare a prohibited exaction invalid and recover damages.

If approved by the Governor, these provisions take effect October 1, 2021.

Vote: Senate 34-6; House 79-37